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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/769,532	01/30/2004	Robert G. Whirley	1880-17 RCE III	8638

82865

7590

01/11/2010

Hoffmann & Baron LLP
6900 Jericho Turnpike
Syosset, NY 11791

EXAMINER

ART UNIT	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.



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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
10769532	1/30/2004	WHIRLEY ET AL.	1880-17 RCE III

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EXAMINER

Thomas J. Sweet

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3774	20100107

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Commissioner for Patents

The appeal brief is defective based on section IV which states "In response to the final rejection mailed May 22, 2009, a Notice of Appeal was filed on August 21, 2009 without further amendments or arguments. In addition, no further amendments have been presented after the filing of this appeal." An after final argument date 07/22/2009 appears in the file. The Advisory Action mailed 8/12/2009 is material to the Appeal having placed addition arguments and extrinsic evidence on the record which establishing that PEG is miscible in body fluid and does not rely of tissue contact for elution as argued. The content of the Advisory action appears below.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). regarding official notice, the rejection is two pronged there is both official notice and evidence. the official notice was not addressed so it is admitted prior art. the Examiner points to both Rhee et al and Shukla (6432438,example 15) as extrinsic evidence demonstration that is is well known to use PEG as a means of drug delivery. Regarding the teachings of Rhee et al, the disclosure clearly stated that PEG is hydrophilic and as the extrinsic evidence of (6432438,example 15) releases drugs because it is hydrophilic and completely miscible in water (or body fluid since that are water based)

/Thomas J Sweet/
Primary Examiner, Art Unit 3774